

Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 DEAE-00 CIAE-00 INR-10 IO-14
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NSC-05 OES-09 OMB-01 CG-00 L-03 PPTE-00 CA-01
DOTE-00 PA-02 HA-05 SCS-06 H-02 SS-15 /113 W
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FM AMEMBASSY PORT AU PRINCE
TO SECSTATE WASHDC 9268

UNCLAS SECTION 1 OF 2 PORT AU PRINCE 3313

E.O. 11652: N/A
TAGS: SNAR, HA
SUBJECT: HAITIAN NARCOTICS LAW

REF: A) STATE 170187, B) 76 PORT AUR PRINCE A-08, C) STATE 201357

1. THE COMMENTARY THAT FOLLOWS IN REPSONSE TO REF A IS BASED ON THE "DECREE REGULATING THE TRADE IN AND USE OF NARCOTICS IN ORDER TO PREVENT THE RECRUDESCENCE OF DANGERS TO WHICH THE COLLECTIVE HEALTH, NATIONAL ECONMY AND SOCIAL SECURITY ARE EZPOSED. THE DECREE WAS PUBLISHED IN THE OFFICIAL HAITIAN GOVERNMENT BAZETTE, LE MONITEUR, ON JANUARY 5, 1976, AND REPORTED IN REF B. THE LAW HAS PROVIDED THE GUIDELINE FOR HAITIAN COURT PRACTICE IN 1977 AND 1978. ANSWERS ARE PROVIDED FOLLOWING THE ORDER OF THE QUESTIONS OF REF A.

2. A. POSSESSION.

(1) IS THERE A DIFFERENTIATION MADE IN THE LAW FOR VARIOUS NARCOTICS?

ANSWER: THE LAW MAKES NO DISTINCTION BETWEEN ANY TYPE OF DRUG.

(2) IS THERE A QUALIFYING AMOUNT TO BE IN POSSESSION FOR OPERATION OF THE OFFENSE?

ANSWER: THE LAW MAKE NO DISTINCTION AS TO AMOUNT. PRACTICE ALSO APPEARS TO MAKE NO DISTINCTION AS TO AMOUNT.

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(3) ARE PENALTIES FOR POSSESSION VARIABLE?

ANSWER: THE LAW DOES NOT REFER TO POSSESSION AS SUCH. IT DISTINGUISHES BETWEEN USERS AND TRAFFICKERS. IN GENERAL, USERS ARE ACCORDED CONSIDERABLY SMALLER FINES THAN TRAFFICKERS. THE LAW DOES PROVIDE FOR DISTINCTION IN TERMS OF THE SEVERITY OF THE PENALTY; FINES RANGE FROM \$1,000 TO \$2,000 AND SIX MONTHS TO TWO YEARS IN JAIL FOR A FIRST OFFENSE; PENALTY IS

DOUBLED IN THE CASE OF A SECOND OFFENSE. FOREIGN USERS MAY, IN ADDITION, BE EXPELLED FROM THE COUNTRY AND NEVER ALLOWED TO RETURN.

B. TRAFFICKING.

(1) DOES THE LAW CONSOLIDATE ALL CONTROLLED SUBSTANCES INTO A GENERAL TRAFFICKING OFFENSE?

ANSWER: ALL CONTROLLED SUBSTANCES ARE CONSOLIDATED AS A GENERAL TRAFFICKING OFFENSE.

(2) ARE THERE MAXIMUM AND MINIMUM PENALTIES, ETC.?

ANSWER: TRAFFICKERS CAN BE PENALIZED FROM THREE TO FIFTEEN YEARS IN PRISON AND FROM \$2,000 TO \$100,000 FINE FOR A FIRST OFFENSE. THE PENALTY IS DOUBLED FOR A SECOND OFFENSE. MORE BROADLY DEFINED TRAFFICKERS, I.E. THOSE DEFINED AS ENGAGED IN THE EXPORT, IMPORT, TRANSFER OR PRODUCTION OF NARCOTICS, CAN BE PENALIZED FROM TEN TO TWENTY-FIVE YEARS AND FINED \$20,000 TO \$200,000 FOR A FIRST OFFENSE; PENALTY CAN BE DOUBLED FOR A SECOND OFFENSE. FOREIGN TRAFFICKERS MAY, IN ADDITION, BE EXPELLED FROM THE COUNTRY AND NEVER ALLOWED TO RETURN. THE LAW PROHIBITS PROVISIONAL LIBERTY FOR EITHER USERS OR TRAFFICKERS.

(3) WHAT ARE THE ELEMENTS OF THE OFFENSE?

ANSWER: THE LAW PROVIDES NO SPECIFIC GUIDELINES AS TO THE ELEMENTS OF THE OFFENSE. IN PRACTICE THIS MEANS THAT THE GOVERNMENT MAY DETERMINE WITHIN THE GENERAL DEFINITION OF A TRAFFICKER (OR A USER) WHETHER THE PERSON CHARGED HAS BROKEN THE LAW.

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(4) IS THERE A CRIMINAL OFFENSE RELATING TO CONSPIRACY TO TRAFFIC, IMPORT OR EXPORT NARCOTICS?

ANSWER: TRAFFICKERS ARE TREATED UNDER THE CRIMINAL CODE.

C. CULTIVATION, PRODUCTION, ELABORATION.

(1) IS THE CULTIVATION OF MARIJUANA, ETC. PROHIBITED BY LAW?

ANSWER: PRODUCTION OF ANY PLANTS CLASSIFIED AS NARCOTICS OR CONSIDERED HARMFUL TO THE PSYCHIC WELL BEING OF AN INDIVIDUAL IS FORBIDDEN BY THIS LAW EXCEPT UNDER SPECIFIC AUTHORIZATION BY THE GOVERNMENT. PENALTIES ARE AS NOTED ABOVE UNDER TRAFFICKING.

(2) IF LEGAL TO CULTIVATE, ARE THERE LIMITATIONS ON PRODUCTION, SALE, ETC.?

ANSWER: NO LIMITATIONS ARE SPECIFIED; AMOUNTS, THEREFORE, DEPEND ON THE SPECIFIC AUTHORIZATION BY THE GOVERNMENT. NO METHODS OF CONTROL ARE INDICATED.

(3) ARE THERE PENALTIES FOR ELABORATING NARCOTIC SUBSTANCES FROM MARIJUANA, ETC.?

ANSWER: THE PENALTIES ARE THE SAME AS THOSE FOR CULTIVATION, INDICATED ABOVE UNDER TRAFFICKING.

D. FINANCIAL.

(1) IS THERE AN OFFENSE RELATING TO FINANCIAL SUPPORT FOR CULTIVATION, ETC.?

ANSWER: THE PENALTIES FOR FINANCIAL SUPPORT ARE THE SAME

AS THOSE INDICATED AABOVE UNDER TRAFFICKING.

(2) ARE THERE CURRENCY CONTROLS. THE GOURDE HAS BEEN PEGGED TO THE U.S. DOLLAR AT 5 GOURDES TO 1 (ONE) DOLLAR SINCE 1919.

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E. CRIMINAL PROCEDURE.

(1) IS THERE A PERIOD OF INVESTIGATIVE DETENTION IN THE LAW?
ANSWER: HAITIAN LAW (PATTERNED AFTER FRENCH LAW) PROVIDES FOR INVESTIGATIVE DETENTION WHICH CAN BE ALMOST INDEFINITE PROVIDED THE SUSPECTED CRIMINAL IS BROUGHT BEFORE A JUDGE AND CHARGED WITHIN 48 HOURS OF HIS DETENTION. OUR EXPERIENCE SO FAR HAS BEEN THAT USERS ARE KEPT ONLY A SHORT TIME BECAUSE THE CASE CAN BE RESOLVED BY CIVIL TRIBUNAL WHEREAS TRAFFICKERS, WHO ARE TRIED IN THE CRIMINAL ASSIZES, MAY HAVE TO WAIT SEVERAL MONTHS BEFORE THE ASSIZES ARE HELD. CONSULAR ACCESS IS PERMITTED AND THE CONSUL HAS ALWAYS BEEN NOTIFIED WITHIN A DAY OR TWO OF THE ARREST OF SOMEONE FOR THE USE OF OR TRAFFICKING IN DRUGS.

(2) WHAT IS CUSTOMARY LENGTH OF PRETRIAL DETENTION?
ANSWER: SEE ABOVE.

(3) WHAT IS AVERAGE LENGTH OF THE TRIAL PROCESS?
ANSWER: THE TRIAL PROCESS FOR USERS AND TRAFFICKERS HAS USUALLY NOT TAKEN MORE THAN A DAY OR TWO. SENTENCING HAS USUALLY BEEN DELIVERED ONE OR TWO WEEKS AFTER THE TRIAL. ALTHOUGH ALL TRIAL DECISIONS UNDER THIS LAW MAY BE APPEALED, NO PERSON CHARGED UNDER THIS LAW THAT WE ARE AWARE OF HAS USED THE APPELLATE PROCESS.

(4) IS LEGAL COUNSEL AVAILABLE AT NO COST TO DEFENDANTS?
ANSWER: GOVERNMENT HAS ON OCCASION PROVIDED PUBLIC DEFENDERS. LAWYERS ARE ALSO AVAILABLE FOR FEES THAT HAVE RANGED FROM
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\$1,000 TO \$10,000.

(5) IS THERE A PROVISION FOR CONDITIONAL LIBERTY?

ANSWER: THE LAW PROHIBITS PROVISIONAL LIBERTY.

(6) IS IT CUSTOMARY TO EXPEL MINOR OFFENDERS, PURCHASERS OF
SMALL AMOUNTS OF NARCOTICS, ETC?

ANSWER: THE LAW PROVIDES FOR THE EXPULSION OF ALL FOREIGNERS
IN ADDITION TO THE FINES AND PENALTIES THAT THEY MAY BE SUBJECT
TO. IN PRACTICE, UNTIL 1978 MOST FOREIGN USERS AND TRAFFICKERS
WERE EXPELLED QUICKLY WITHOUT COURT PROCEDURES. SINCE 1978,
ALMOST ALL FOREIGN USERS AND TRAFFICKERS HAVE BEEN TRIED.
USERS THIS YEAR HAVE BEEN FINED \$1,000 BUT HAVE NOT BEEN
EXPELLED. MOST FOREIGN TRAFFICKERS HAVE BEEN FINED AND
SENTENCED TO JAIL TERMS AND HAVE ALL BEEN ORDERED TO BE
EXPELLED AT THE END OF THEIR JAIL TERMS.

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